Opinion No. 1130

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

LINCOLN PARK UNITED METHODIST CHURCH and THE METHODIST UNION OF WASHINGTON, Petitioners	:	
v.	:	Docket No. 2352
DISTRICT OF COLUMBIA, Respondent	:	

MEMORANDUM ORDER

This matter comes before the Court upon the District of Columbia's motion to dismiss the petitioners' action contesting the real estate assessment for fiscal years 1974 and 1975 on the ground that the petition was not filed within six months after the date of the assessment.

The taxes in controversy are real estate taxes for the fiscal years 1974, 1975 and 1976, assessed against Lots 74 and 121 in Square 1035, known as 1301 North Carolina Avenue, N.E., and 1302-1306 East Capitol Street, N.E. These properties previously enjoyed tax-exempt status while owned by the Epworth Methodist Church from whom petitioner, The Methodist Union of Washington, D.C., acquired title on May 21, 1973. On July 1, 1973, the property was removed from the tax-exempt rolls by the Department of Finance and Revenue. Although title was held by the Methodist Union, these properties have been used and occupied continuously since May 20, 1973, by the co-petitioner, Lincoln Park United Methodist Church.[1/]

1/ It appears from petitioner Lincoln Park's memorandum that the arrangement, whereby title remained in the Methodist Union while Lincoln Park immediately moved into and occupied the property with the understanding that the title would be transferred at a subsequent date, represented a private agreement for the mutual benefit of the parties. Title was eventually transferred to Lincoln Park on November 20, 1975, after the conclusion of fiscal year 1975, the second year at issue in this case.

The Methodist Union as record owner was mailed a tax bill constituting its notice of assessment for fiscal year 1974 on November 12, 1973, and a similar bill for fiscal year 1975 on November 1, 1974. Payment of these taxes was not a prerequisite to the appeal filed in the Tax Division of the Superior Court on December 12, 1975. See D.C. Code §47-801e.

The appeal procedure, relevant to the real estate tax assessment at issue, is contained in D.C. Code §47-2403,[2/] which provides in pertinent part as follows:

> Any person aggrieved by any assessment by the District of any personal-property * * * taxes, or penalties thereon, may within six months after payment of the tax together with the penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes. * * * (Emphasis supplied.)

Since D.C. Code §47-2403 provides that the mailing of a statement of taxes due constitutes notice of that assessment, the six-month period from which an appeal must be taken began to run from the date of the tax bill. National Graduate University v. District of Columbia, 346 A. 2d 740 (1975).

The statements of taxes due were mailed by the Department of Finance and Revenue to the petitioner Methodist Union on November 12, 1973, and November 1, 1974. The instant petition was not filed until December 12, 1975. Wherefore, the Court finds that the petition,as it relates to fiscal years 1974 and 1975 having been filed more than six months after the petitioner Methodist Union

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2/ Appeals from assessments of property alleged to be tax exempt are found in §47-801e which, in turn, requires reference to the procedures set out in §47-2403.

received notices of the assessment as reflected on the tax bills, is not in compliance with the jurisdictional prerequisites of D.C. Code §47-2403. For this reason, it appears that the Court lacks jurisdiction to hear and determine that portion of the petition and to that extent the petition should be dismissed.

Petitioners, however, seek to avoid the consequences of the apparent untimeliness of their petition on the grounds that the respondent is estopped from raising the jurisdictional defense of the statute of limitations. In support of their argument, petitioners contend that, had either the Methodist Union or Lincolr Park Methodist sought to timely file a petition challenging this assessment, the District of Columbia would have moved to bar the suit on the grounds that neither had standing to challenge the assessment because record title was held by one organization while the property was actually being occupied and used by another. In this connection, they argue further that a refusal of the District to grant an exemption on that ground would have been incorrect as a matter of law, since there is no requirement in the statute that property, in order to be exempt, must be owned and used by the same entity and that, in any event, Lincoln Park was the equitable owner of the property.

The validity of this argument requires an examination of the record as to the chronology of events, as well as the correctness of the legal positions asserted as a basis for the estoppel argument.

From the record it is clear that both petitioners were aware of the need to secure a tax exemption for the involved property early in 1974. By letter dated January 9, 1974, the attorney for Lincoln Park requested an exemption for the Church property at 1301 North Carolina Avenue, N.E. On January 24, 1974, allegedly in response to a telephone call from the Department of Finance and Revenue, the same attorney wrote another letter to the Department embodying additional

supporting information and renewing his request for a tax exemption for the same property and other parcels claimed to be owned by Lincoln Park. We note that the property listed in this letter as "owned" included the Church on North Carolina Avenue and the property on East Capitol Street, although, at the time, the record ownership was in the name of the Methodist Union.

On February 7, 1974, the Department of Finance and Revenue advised the Methodist Union that the property in question was deeded to the Methodist Union of Washington, Inc., that a deed Recordation Tax Return had been filed without payment of tax, and that, if the property were to be exempted, a written request should be filed at once. Apparently, at least on the present record, all correspondence between the petitioners and the Department of Finance and Revenue ceased following the February 7th letter. As of that date, less than six months had elapsed since the date of the initial assessment of the real estate taxes.

The first premise on which petitioners base their argument that neither the Methodist Union nor Lincoln Park could apply for a tax exemption because there was no identity of owner and user is erroneous as a matter of law. The case of District of Columbia v. Maryland Synod of the Lutheran Church, 307 A. 2d 735 (D.C. App. 1973), cited to the Court by Lincoln Park itself, held that the owner of a property used by another entity for a tax-exempt purpose was entitled to a tax exemption. Pursuant to D.C. Code §47-701, the Methodist Union as record owner was the proper party to receive notices of the assessments (Tepper v. Fraser, 63 U.S. App. D.C. 174 (1934)), and further, under the authority of Maryland Synod, supra, the Union as the owner could have requested and been entitled to a tax exemption for the property if the party occupying the premises was using it for a qualified purpose. Indeed, this

course of action was implicit in the suggestion made to the Methodist Union in the letter from the Department of Finance and Revenue in February, 1974.

Finally, the Court finds that petitioners' estoppel argument lacks factual support in the record. In order to establish the requisite estoppel to avoid the jurisdictional defect inherent in the untimely filing of a petition, the petitioners must show that their failure to timely file a petition was the result of inexcusable delay in rendering a decision or an alleged erroneous decision by the District which lulled them into inaction. Conduct designed to induce inaction on the part of the plaintiff will estop the defendant from relying upon a limitation statute. In this regard, the Court said in Hornblower v. George Washington University, 31 U.S. App. D.C. 67 (1908):

> We think it is a well settled principle of law that a defendant cannot avail himself of the bar of statute of limitations if it appears that he has done anything that would tend to lull the plaintiff into inaction, and thereby permit the limitation prescribed by the statute to run against him.

Even assuming for the sake of argument that the Department of Finance and Revenue based their final denial of tax exemption to Lincoln Park on an erroneous legal ground, the record fails to disclose when, if ever, the request was administratively denied, thus making it impossible for the Court to determine whether the erroneous denial of the exemption was the cause of the failure of Lincoln Park to file a timely petition in the Superior Court. The correspondence of early 1974 in the record makes it evident that Lincoln Park took no action at all for almost two years. 3/

3/ The record here is incomplete in that there is no documentary evidence reflecting the rejection of Lincoln Park's application for exemption or a date of their denial. The correspondence presented to the Court contain an admission by Lincoln Park that on some unspecified date they were informed that the exemption could not be granted.

On this record, therefore, the petitioners have failed to make the factual showing necessary to establish an estoppel defense. Accordingly, it is this 17th day of May, 1976,

ORDERED that the respondent's motion to dismiss as it relates to fiscal years 1974 and 1975 be and the same hereby is granted, and the petition to that extent is dismissed.

Fred B. Ugast

FRED B. UGAST
Judge

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